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DECISION

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THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-19019.

DATE: December 12, 1977

MATTER OF: Armor Elevator Company, Inc.

DIGEST:

1. Where solicitation instructs bidders to insert percentage goals for minority group employment and sign applicable affirmative action plan, signed bid which, through alleged clerical error, states goal below required minimum was properly rejected as nonresponsive since compliance with terms of affirmative action plan was matter of responsiveness and failure to comply cannot be waived as minor informality and may not be corrected after bid opening.
2. Nonresponsive bid may not be accepted even though it would result in economic advantage to the Government since acceptance would be inconsistent with maintaining integrity of competitive bidding system.

Armor Elevator Company, Inc. (Armor) protests the rejection of its bid as nonresponsive to the affirmative action requirements of invitation for bids (IFB) No. 537-65-77, issued by the Veterans Administration (VA), and the award of a contract to the second low bidder. The IFB was for modernization of passenger elevators at the VA West Side Hospital, Chicago, Illinois and contemplated that work would be completed within 862 calendar days.

The IFB advised that the certification in Section AP, Notice of Requirement--Submission of Affirmative Action Plan to Ensure Equal Employment Opportunity, was required to be properly executed and submitted as part of the bid in order for a bidder to be eligible for award.

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Appendix A of Section A1 specified that to be eligible for award of the contract, each bidder must submit goals, within specified ranges: " \* \* \* for minority manpower utilization \* \* \* to be achieved on all work of the bidder within the Chicago, Illinois area during the terms of his performance of this contract in the trades specified below \* \* \*." The Appendix further provided that:

"A bidder who fails or refuses to complete or submit such goals shall not be deemed a responsive bidder and may not be awarded the contract \* \* \*."

At bid opening on August 23, 1977, Armor submitted the low bid of \$541,552. However, in Appendix A of its bid, Armor indicated that the total number of manhours to be worked by minority persons on all of Armor's projects within the Chicago area during the periods from July 1, 1977 until December 31, 1978 was zero. Consequently, its bid was rejected as nonresponsive for failure to submit minimum acceptable goals. Armor then protested to the contracting officer, claiming that the figures shown as its minority group employment goals were a clerical error and attempted to resubmit Appendix A. The protest was denied by the contracting officer on September 8, 1977. Armor subsequently protested the rejection of its bid to this Office.

Although award of the contract was made to Westinghouse Elevator Company as the low responsive bidder, issuance of a Notice to Proceed has been withheld pending resolution of the protest.

Armor claims that the submission of erroneous figures as part of Appendix A resulted from inadvertent clerical error and that it should have been given the opportunity to correct the "obvious error" in the bid submission. In support of this position, Armor argues that the provisions of the Federal Procurement Regulations (FPR) § 1-2.406 (1964 ed., Circ.1), and the Veterans Administration Procurement Regulations (VAPR) § 8-2.406, 41 CFR § 8-2.406 (1976), indicate that the contracting officer may correct clerical errors in bids prior to award and that FPR § 1-2.405 (1964 ed.) allows

a contractor to cure minor irregularities. Armor states that it has always complied with affirmative action programs and argues that the submission of its corporate affirmative action program with its bid indicates its intention to comply with the affirmative action plan in the solicitation. Armor also contends that the Government should be more concerned with the cost of projects than with clerical errors in bids.

It is VA's position that Armor's failure to submit the minimum goals required rendered its bid nonresponsive because while Armor may have intended to be bound by the affirmative action plan in the IFB, neither the bid as submitted nor Armor's past compliance with affirmative action program requirements is a commitment to any specific goal under the present solicitation. We agree.

It has been generally held that the absence from a bid of goals within the prescribed ranges (under the type of affirmative action requirement here involved) renders the bid nonresponsive. Northeast Construction Company v. Romney, 485 F. 2d 752 (D.C. Cir. 1973); Rossetti Contracting Company, Inc. v. Brennan, 508 F.2d 1039 (7th Cir. 1975); Starline, Incorporated, 55 Comp. Gen. 1160 (1976), 76-1 CPD 365. It is also well settled that a nonresponsive bid may not be corrected after bid opening to make it responsive. See Peter Gordon Co., Inc., B-185300, March 3, 1976, 76-1 CPD 153; The Huffman-Wolfe Company, B-185911, August 5, 1976, 76-2 CPD 129.

In this regard, we have previously considered cases where the low bid contained minority hiring goals which fell below the prescribed minimums. The low bidders asserted that the offending goals were the result of an obvious clerical error and that the failure to indicate a minimum acceptable goal in such circumstances was a minor informality subject to waiver or correction. We held, however, that the affirmative action requirements of the solicitations, including the minimum goals, were material requirements and that a bid which deviated from those requirements was nonresponsive and could not be corrected. See B-176260, August 2, 1972; B-174307, February 8, 1972, affirmed on reconsideration, April 10, 1972. Those cases are controlling here.

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With regard to Armor's argument that its bid should not have been rejected because socially desirable goals, such as increasing minority group employment, which are properly achieved by governmental regulation "should not be allowed to obfuscate the primary objective of competitive bidding, namely, the obtaining of materials and services by the Government at the lowest and best price " we point out that the principle of paramount importance in the competitive bidding system is that in order for a bid to be eligible for award it must conform to the invitation for bids. See 41 U.S.C. § 253 (1970). To permit a bid which fails to conform to the material elements of the IFB at the time of bid opening to be corrected would be tantamount to permitting the submission of a new bid, thereby compromising the integrity of the competitive system by making it possible for a bidder to decide after bid opening whether or not to make its bid acceptable. Ed-Mor Electric Co., Inc., B-187348, November 17, 1976, 76-2 CPD 431. Accordingly, we have consistently maintained that notwithstanding any economic advantage that might accrue to the Government by allowing correction of a nonresponsive bid in a particular case, the maintenance of the integrity of the competitive bidding system is more in the best interest of the Government. See A.D. Roe Company, Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD 194; Ed-Mor Electric Co., Inc., supra.

It is further pointed out, however, that in response to many expressions of concern that the Government was losing the benefit of low bids because of bidders' failures to submit the required minority employment goals or otherwise comply with solicitation affirmative action requirements, including concern expressed by this Office in 1974 and 1976, the Department of Labor (which is responsible for promulgating affirmative action bid conditions) devised simplified solicitation requirements which no longer require submission of goals

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or certifications with the bid for areas where voluntary noemtown plans are in effect. See 41 Fed. Reg. 32482 (1976). We recently again advised the Secretary of Labor that "there is a great a need for the revision of the requirements of imposed affirmative action plans such as the Chicago Plan" because "funds are continuing to be lost because of the failure of the low bidders to properly complete the fill-in \* \* \* requirements of these imposed plans." B-189073, October 7, 1977. Such a revision has been proposed and is under consideration. See 42 Fed. Reg. 41378 (1977).

The protest is denied.

  
Deputy Comptroller General  
of the United States